

Part 1

Services for People with Disabilities

62A-5-101 Definitions.

As used in this chapter:

- (1) "Approved provider" means a person approved by the division to provide home-based services.
- (2) "Board" means the Utah State Developmental Center Board created under Section 62A-5-202.5.
- (3)
 - (a) "Brain injury" means an acquired injury to the brain that is neurological in nature, including a cerebral vascular accident.
 - (b) "Brain injury" does not include a deteriorating disease.
- (4) "Designated intellectual disability professional" means:
 - (a) a psychologist licensed under Title 58, Chapter 61, Psychologist Licensing Act, who:
 - (i)
 - (A) has at least one year of specialized training in working with persons with an intellectual disability; or
 - (B) has at least one year of clinical experience with persons with an intellectual disability; and
 - (ii) is designated by the division as specially qualified, by training and experience, in the treatment of an intellectual disability; or
 - (b) a clinical social worker, certified social worker, marriage and family therapist, or professional counselor, licensed under Title 58, Chapter 60, Mental Health Professional Practice Act, who:
 - (i) has at least two years of clinical experience with persons with an intellectual disability; and
 - (ii) is designated by the division as specially qualified, by training and experience, in the treatment of an intellectual disability.
- (5) "Deteriorating disease" includes:
 - (a) multiple sclerosis;
 - (b) muscular dystrophy;
 - (c) Huntington's chorea;
 - (d) Alzheimer's disease;
 - (e) ataxia; or
 - (f) cancer.
- (6) "Developmental center" means the Utah State Developmental Center, established in accordance with Part 2, Utah State Developmental Center.
- (7) "Direct service worker" means a person who provides services to a person with a disability:
 - (a) when the services are rendered in:
 - (i) the physical presence of the person with a disability; or
 - (ii) a location where the person rendering the services has access to the physical presence of the person with a disability; and
 - (b)
 - (i) under a contract with the division;
 - (ii) under a grant agreement with the division; or
 - (iii) as an employee of the division.
- (8) "Director" means the director of the Division of Services for People with Disabilities.
- (9)
 - (a) "Disability" means a severe, chronic disability that:
 - (i) is attributable to:

- (A) an intellectual disability;
- (B) a condition that qualifies a person as a person with a related condition, as defined in 42 C.F.R. 435.1009;
- (C) a physical disability; or
- (D) a brain injury;
- (ii) is likely to continue indefinitely;
- (iii)
 - (A) for a condition described in Subsection (9)(a)(i)(A), (B), or (C), results in a substantial functional limitation in three or more of the following areas of major life activity:
 - (I) self-care;
 - (II) receptive and expressive language;
 - (III) learning;
 - (IV) mobility;
 - (V) self-direction;
 - (VI) capacity for independent living; or
 - (VII) economic self-sufficiency; or
 - (B) for a condition described in Subsection (9)(a)(i)(D), results in a substantial limitation in three or more of the following areas:
 - (I) memory or cognition;
 - (II) activities of daily life;
 - (III) judgment and self-protection;
 - (IV) control of emotions;
 - (V) communication;
 - (VI) physical health; or
 - (VII) employment; and
- (iv) requires a combination or sequence of special interdisciplinary or generic care, treatment, or other services that:
 - (A) may continue throughout life; and
 - (B) must be individually planned and coordinated.
- (b) "Disability" does not include a condition due solely to:
 - (i) mental illness;
 - (ii) personality disorder;
 - (iii) hearing impairment;
 - (iv) visual impairment;
 - (v) learning disability;
 - (vi) behavior disorder;
 - (vii) substance abuse; or
 - (viii) the aging process.
- (10) "Division" means the Division of Services for People with Disabilities.
- (11) "Eligible to receive division services" or "eligibility" means qualification, based on criteria established by the division in accordance with Subsection 62A-5-102(4), to receive services that are administered by the division.
- (12) "Endorsed program" means a facility or program that:
 - (a) is operated:
 - (i) by the division; or
 - (ii) under contract with the division; or
 - (b) provides services to a person committed to the division under Part 3, Admission to an Intermediate Care Facility for People with an Intellectual Disability.

- (13) "Licensed physician" means:
 - (a) an individual licensed to practice medicine under:
 - (i) Title 58, Chapter 67, Utah Medical Practice Act; or
 - (ii) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or
 - (b) a medical officer of the United States Government while in this state in the performance of official duties.
- (14) "Physical disability" means a medically determinable physical impairment that has resulted in the functional loss of two or more of a person's limbs.
- (15) "Public funds" means state or federal funds that are disbursed by the division.
- (16) "Resident" means an individual under observation, care, or treatment in an intermediate care facility for people with an intellectual disability.

Amended by Chapter 300, 2016 General Session

62A-5-102 Division of Services for People with Disabilities -- Creation -- Authority -- Direction -- Provision of services.

- (1) There is created within the department the Division of Services for People with Disabilities, under the administrative direction of the executive director of the department.
- (2) In accordance with this chapter, the division has the responsibility to plan and deliver an appropriate array of services and supports to persons with disabilities and their families in this state.
- (3) Within appropriations from the Legislature, the division shall provide services to any person with a disability who is eligible to receive division services.
- (4)
 - (a) Starting on July 1, 2013, any new appropriations designated to serve eligible persons waiting for services from the division shall be allocated as set forth in this section.
 - (b) Eighty-five percent of the money appropriated in Subsection (4)(a) shall be allocated, as determined by the division by rule based on the:
 - (i) severity of the disability;
 - (ii) urgency of the need for services;
 - (iii) ability of a parent or guardian to provide the person with appropriate care and supervision; and
 - (iv) length of time during which the person has not received services from the division.
 - (c) Fifteen percent of the money appropriated in Subsection (4)(a) shall be allocated for respite services, and the division shall:
 - (i) establish rules to identify a person whose only need is respite services;
 - (ii) allocate money under this Subsection (4)(c) to the people described in Subsection (4)(c)(i) based on random selection; and
 - (iii) if all persons described in Subsection (4)(c)(i) have been served and there is money remaining for respite care under this Subsection (4)(c), the division shall use the remaining money as described in Subsection (4)(b).
 - (d) Funds from Subsection (4)(b) that are not spent by the division at the end of the fiscal year may be used as set forth in Subsection (7).
- (5) The division:
 - (a) has the functions, powers, duties, rights, and responsibilities described in Section 62A-5-103; and
 - (b) is authorized to work in cooperation with other state, governmental, and private agencies to carry out the responsibilities described in Subsection (5)(a).

- (6) Within appropriations authorized by the Legislature, and to the extent allowed under Title XIX of the Social Security Act, the division shall ensure that the services and support that the division provides to any person with a disability:
 - (a) are provided in the least restrictive and most enabling environment;
 - (b) ensure opportunities to access employment; and
 - (c) enable reasonable personal choice in selecting services and support that:
 - (i) best meet individual needs; and
 - (ii) promote:
 - (A) independence;
 - (B) productivity; and
 - (C) integration in community life.
- (7)
 - (a) Appropriations to the division are nonlapsing.
 - (b) If an individual receiving services under Subsection (4)(b) or (c) ceases to receive those services, the division shall use the funds that were allocated to that individual to provide services to another eligible individual waiting for services as described in Subsection (4)(b).
 - (c) Funds unexpended by the division at the end of the fiscal year may be used only for one-time expenditures unless otherwise authorized by the Legislature.
 - (d) A one-time expenditure under this section:
 - (i) is not an entitlement;
 - (ii) may be withdrawn at any time; and
 - (iii) may provide short-term, limited services, including:
 - (A) respite care;
 - (B) service brokering;
 - (C) family skill building and preservation classes;
 - (D) after school group services; and
 - (E) other professional services.

Amended by Chapter 172, 2013 General Session

62A-5-103 Responsibility and authority of division.

- (1) For purposes of this section "administer" means to:
 - (a) plan;
 - (b) develop;
 - (c) manage;
 - (d) monitor; and
 - (e) conduct certification reviews.
- (2) The division has the authority and responsibility to:
 - (a) administer an array of services and supports for persons with disabilities and their families throughout the state;
 - (b) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that establish eligibility criteria for the services and supports described in Subsection (2)(a);
 - (c) consistent with Section 62A-5-206, supervise the programs and facilities of the Developmental Center;
 - (d) in order to enhance the quality of life for a person with a disability, establish either directly, or by contract with private, nonprofit organizations, programs of:
 - (i) outreach;
 - (ii) information and referral;

- (iii) prevention;
 - (iv) technical assistance; and
 - (v) public awareness;
 - (e) supervise the programs and facilities operated by, or under contract with, the division;
 - (f) cooperate with other state, governmental, and private agencies that provide services to a person with a disability;
 - (g) subject to Subsection (3), ensure that a person with a disability is not deprived of that person's constitutionally protected rights without due process procedures designed to minimize the risk of error when a person with a disability is admitted to an intermediate care facility for people with an intellectual disability, including:
 - (i) the developmental center; and
 - (ii) facilities within the community;
 - (h) determine whether to approve providers;
 - (i) monitor and sanction approved providers, as specified in the providers' contract;
 - (j) subject to Section 62A-5-103.5, receive and disburse public funds;
 - (k) review financial actions of a provider who is a representative payee appointed by the Social Security Administration;
 - (l) establish standards and rules for the administration and operation of programs conducted by, or under contract with, the division;
 - (m) approve and monitor division programs to insure compliance with the board's rules and standards;
 - (n) establish standards and rules necessary to fulfill the division's responsibilities under Part 2, Utah State Developmental Center, and Part 3, Admission to an Intermediate Care Facility for People with an Intellectual Disability, with regard to an intermediate care facility for people with an intellectual disability;
 - (o) assess and collect equitable fees for a person who receives services provided under this chapter;
 - (p) maintain records of, and account for, the funds described in Subsection (2)(o);
 - (q) establish and apply rules to determine whether to approve, deny, or defer the division's services to a person who is:
 - (i) applying to receive the services; or
 - (ii) currently receiving the services;
 - (r) in accordance with state law, establish rules:
 - (i) relating to an intermediate care facility for people with an intellectual disability that is an endorsed program; and
 - (ii) governing the admission, transfer, and discharge of a person with a disability;
 - (s) manage funds for a person residing in a facility operated by the division:
 - (i) upon request of a parent or guardian of the person; or
 - (ii) under administrative or court order; and
 - (t) fulfill the responsibilities described in Chapter 5a, Coordinating Council for Persons with Disabilities.
- (3) The due process procedures described in Subsection (2)(g):
- (a) shall include initial and periodic reviews to determine the constitutional appropriateness of the placement; and
 - (b) with regard to facilities in the community, do not require commitment to the division.

Amended by Chapter 366, 2011 General Session

62A-5-103.1 Program for provision of supported employment services.

- (1) There is established a program for the provision of supported employment services to be administered by the division.
- (2) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary for the implementation and administration of the program described in this section.
- (3) In accordance with Subsection (4), within funds appropriated by the Legislature for the program described in this section, the division shall provide supported employment services to a person with a disability who:
 - (a) is eligible to receive services from the division;
 - (b) has applied for, and is waiting to, receive services from the division;
 - (c) is not receiving other ongoing services from the division;
 - (d) is not able to receive sufficient supported employment services from other sources;
 - (e) the division determines would substantially benefit from the provision of supported employment services; and
 - (f) does not require the provision of other ongoing services from the division in order to substantially benefit from the provision of supported employment services.
- (4)
 - (a) The division shall provide supported employment services under this section outside of the prioritization criteria established by the division for the receipt of other services from the division.
 - (b) The division shall establish criteria to determine the priority, between persons eligible for services under this section, for receiving services under this section.
- (5) It is the intent of the Legislature that the services provided under the program described in this section:
 - (a) shall be provided separately from the Medicaid program described in Title XIX of the Social Security Act;
 - (b) may not be supported with Medicaid funds;
 - (c) may not be provided as part of a Medicaid waiver;
 - (d) do not constitute an entitlement of any kind; and
 - (e) may be withdrawn from a person at any time.
- (6) The division shall report to the Health and Human Services Interim Committee in even calendar years regarding the success and progress of employment services offered under this section.

Amended by Chapter 125, 2013 General Session

62A-5-103.2 Pilot Program for the Provision of Family Preservation Services.

- (1) There is established a pilot program for the provision of family preservation services to a person with a disability and that person's family, beginning on July 1, 2007, and ending on July 1, 2009.
- (2) The family preservation services described in Subsection (1) may include:
 - (a) family skill building classes;
 - (b) respite hours for class attendance; or
 - (c) professional intervention.
- (3) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary for the implementation and administration of this section.

- (4) In accordance with Subsection (5), within funds appropriated by the Legislature for the pilot program described in this section, the division shall provide family preservation services to a person with a disability, and that person's family, if that person:
 - (a) is eligible to receive services from the division;
 - (b) has applied for, and is willing to receive, services from the division;
 - (c) is not receiving other ongoing services from the division;
 - (d) is not able to receive sufficient family preservation services from other sources;
 - (e) is determined by the division to be a person who would substantially benefit from the provision of family preservation services; and
 - (f) does not require the provision of other ongoing services from the division in order to substantially benefit from the provision of family preservation services.
- (5)
 - (a) The division shall provide family preservation services under this section outside of the prioritization criteria established by the division for the receipt of other services from the division.
 - (b) The division shall establish criteria to determine the priority, between persons eligible for services under this section, for receiving services under this section.
- (6) It is the intent of the Legislature that the services provided under the pilot program described in this section:
 - (a) shall be provided separately from the Medicaid program described in Title XIX of the Social Security Act;
 - (b) may not be supported with Medicaid funds;
 - (c) may not be provided as part of a Medicaid waiver;
 - (d) do not constitute an entitlement of any kind; and
 - (e) may be withdrawn from a person at any time.

Amended by Chapter 29, 2009 General Session

62A-5-103.3 Employment first emphasis on the provision of services.

- (1) When providing services to a person with a disability under this chapter, the division shall, within funds appropriated by the Legislature and in accordance with the requirements of federal and state law, give priority to providing services that assist the person in obtaining and retaining meaningful and gainful employment that enables the person to:
 - (a) purchase goods and services;
 - (b) establish self-sufficiency; and
 - (c) exercise economic control of the person's life.
- (2) The division shall develop a written plan to implement the policy described in Subsection (1) that includes:
 - (a) assessing the strengths and needs of a person with a disability;
 - (b) customizing strength-based approaches to obtaining employment;
 - (c) expecting, encouraging, providing, and rewarding:
 - (i) integrated employment in the workplace at competitive wages and benefits; and
 - (ii) self-employment;
 - (d) developing partnerships with potential employers;
 - (e) maximizing appropriate employment training opportunities;
 - (f) coordinating services with other government agencies and community resources;
 - (g) to the extent possible, eliminating practices and policies that interfere with the policy described in Subsection (1); and

- (h) arranging sub-minimum wage work or volunteer work when employment at market rates cannot be obtained.
- (3) The division shall, on an annual basis:
 - (a) set goals to implement the policy described in Subsection (1) and the plan described in Subsection (2);
 - (b) determine whether the goals for the previous year have been met; and
 - (c) modify the plan described in Subsection (2) as needed.

Enacted by Chapter 169, 2011 General Session

62A-5-103.5 Disbursal of public funds -- Background check of a direct service worker.

- (1) For purposes of this section, "office" means the same as that term is defined in Section 62A-2-101.
- (2) Public funds may not be disbursed to pay a direct service worker for personal services rendered to a person unless the office approves the direct service worker to have direct access and provide services to a child or a vulnerable adult pursuant to Section 62A-2-120.
- (3) For purposes of Subsection (2), the office shall conduct a background check of a direct service worker:
 - (a) before public funds are disbursed to pay the direct service worker for the personal services described in Subsection (2); and
 - (b) using the same procedures established for a background check of an applicant for a license under Section 62A-2-120.
- (4) A child who is in the legal custody of the department or any of the department's divisions may not be placed with a direct service worker unless, before the child is placed with the direct service worker, the direct service worker passes a background check, pursuant to the requirements of Subsection 62A-2-120(13).
- (5) If a public transit district, as described in Title 17B, Chapter 2a, Part 8, Public Transit District Act, contracts with the division to provide services:
 - (a) the provisions of this section are not applicable to a direct service worker employed by the public transit district; and
 - (b) the division may not reimburse the public transit district for services provided unless a direct service worker hired or transferred internally after July 1, 2013, by the public transit district to drive a paratransit route:
 - (i) is approved by the office to have direct access to children and vulnerable adults in accordance with Section 62A-2-120; and
 - (ii) is subject to a background check established in a statute or rule governing a public transit district or other public transit district policy.

Amended by Chapter 255, 2015 General Session

62A-5-104 Director -- Qualifications -- Responsibilities.

- (1) The director of the division shall be appointed by the executive director.
- (2) The director shall have a bachelor's degree from an accredited university or college, be experienced in administration, and be knowledgeable in developmental disabilities, intellectual disabilities, and other disabilities.
- (3) The director is the administrative head of the division.

- (4) The director shall appoint the superintendent of the developmental center and the necessary and appropriate administrators for other facilities operated by the division with the concurrence of the executive director.

Amended by Chapter 369, 2012 General Session

62A-5-105 Division responsibilities -- Policy mediation.

- (1) The division shall establish its rules in accordance with:
 - (a) the policy of the Legislature as set forth by this chapter; and
 - (b) Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (2) The division shall:
 - (a) establish program policy for the division, the developmental center, and programs and facilities operated by or under contract with the division;
 - (b) establish rules for the assessment and collection of fees for programs within the division;
 - (c) no later than July 1, 2003, establish a graduated fee schedule based on ability to pay and implement the schedule with respect to service recipients and their families where not otherwise prohibited by federal law or regulation or not otherwise provided for in Section 62A-5-109;
 - (d) establish procedures to ensure that private citizens, consumers, private contract providers, allied state and local agencies, and others are provided with an opportunity to comment and provide input regarding any new policy or proposed revision to an existing policy;
 - (e) provide a mechanism for systematic and regular review of existing policy and for consideration of policy changes proposed by the persons and agencies described under Subsection (2)(d);
 - (f) establish and periodically review the criteria used to determine who may receive services from the division and how the delivery of those services is prioritized within available funding;
 - (g) review implementation and compliance by the division with policies established by the board to ensure that the policies established by the Legislature in this chapter are carried out; and
 - (h) annually report to the executive director.
- (3) The executive director shall mediate any differences which arise between the policies of the division and those of any other policy board or division in the department.

Amended by Chapter 167, 2013 General Session

62A-5-106 Powers of other state agencies -- Severability.

Nothing in this part shall be construed to supersede or limit the authority granted by law to any other state agency. If any provision of this part, or the application of any provision to the person or circumstance, is held invalid, the remainder of this part shall not be affected.

Enacted by Chapter 1, 1988 General Session

62A-5-109 Parent liable for cost and support of minor -- Guardian liable for costs.

- (1) Parents of a person who receives services or support from the division, who are financially responsible, are liable for the cost of the actual care and maintenance of that person and for the support of the child in accordance with Title 78B, Chapter 12, Utah Child Support Act, and Title 62A, Chapter 11, Recovery Services, until the person reaches 18 years of age.
- (2) A guardian of a person who receives services or support from the division is liable for the cost of actual care and maintenance of that person, regardless of his age, where funds are available

in the guardianship estate established on his behalf for that purpose. However, if the person who receives services is a beneficiary of a trust created in accordance with Section 62A-5-110, or if the guardianship estate meets the requirements of a trust described in that section, the trust income prior to distribution to the beneficiary, and the trust principal are not subject to payment for services or support for that person.

- (3) If, at the time a person who receives services or support from the division is discharged from a facility or program owned or operated by or under contract with the division, or after the death and burial of a resident of the developmental center, there remains in the custody of the division or the superintendent any money paid by a parent or guardian for the support or maintenance of that person, it shall be repaid upon demand.

Amended by Chapter 3, 2008 General Session

62A-5-110 Discretionary trusts for persons with disabilities -- Impact on state services.

- (1) For purposes of this section:

(a) "Discretionary trust for a person with disabilities" means a trust:

- (i) that is established for the benefit of an individual who, at the time the trust is created, is under age 65 and has a disability as defined in 42 U.S.C. Sec. 1382c;
- (ii) under which the trustee has discretionary power to determine distributions;
- (iii) under which the beneficiary may not control or demand payments unless an abuse of the trustee's duties or discretion is shown;
- (iv) that contains the assets of the beneficiary and is established for the benefit of the beneficiary by a parent, grandparent, legal guardian, or court;
- (v) that is irrevocable, except that the trust document may provide that the trust be terminated if the beneficiary no longer has a disability as defined in 42 U.S.C. Sec. 1382c;
- (vi) that is invalid as to any portion funded by property that is or may be subject to a lien by the state; and
- (vii) providing that, upon the death of the beneficiary, the state will receive all amounts remaining in the trust, up to an amount equal to the total medical assistance paid on behalf of the beneficiary.

(b) "Medical assistance" means the same as that term is defined in Section 26-18-2.

- (2) A state agency providing services or support to a person with disabilities may:

- (a) waive application of Subsection (1)(a)(v) with respect to that individual if it determines that application of the criteria would place an undue hardship upon that individual; and
- (b) define, by rule, what constitutes "undue hardship" for purposes of this section.

- (3) A discretionary trust for a person with disabilities is not liable for reimbursement or payment to the state or any state agency, for financial aid or services provided to that individual except:

- (a) to the extent that the trust property has been distributed directly to or is otherwise under the control of the beneficiary with a disability; or
- (b) as provided in Subsection (1)(a)(vi).

- (4) Property, goods, and services that are purchased or owned by a discretionary trust for a person with disabilities and that are used or consumed by a beneficiary with a disability shall not be considered trust property that is distributed to or under the control of the beneficiary.

- (5) The benefits that a person with disabilities is otherwise legally entitled to may not be reduced, impaired, or diminished in any way because of contribution to a discretionary trust for that person.

- (6) All state agencies shall disregard a discretionary trust for a person with disabilities, as defined in Subsection (1), as a resource when determining eligibility for services or support except as, and only to the extent that it is otherwise prohibited by federal law.
- (7) This section applies to all discretionary trusts that meet the requirements contained in Subsection (1) created before, on, or after July 1, 1994.

Amended by Chapter 366, 2011 General Session